

2013 021741

2013 MAR 22 PM 3:53

MICHAEL D. BROWN  
RECORDER

### Environmental Restrictive Covenant

THIS COVENANT is made this 25<sup>th</sup> day of Feb, 2013, by James Nowacki, P.O. Box 2571, Gary, IN 46403 (together with his successors, assignees and heirs, collectively "Owner").

WHEREAS: Owner owns certain real estate in the County of Lake, Indiana, which is more particularly described in the attached **Exhibit "A"** ("Real Estate") which is hereby incorporated and made a part hereof. Owner acquired this Real Estate by deeds on the dates listed below which were recorded in the Office of the Recorder of Lake County, Indiana on the dates and with the deed record numbers listed below.

Property Number	Date Acquired by Deed	Date Recorded in Lake County	Deed Record Number
45-08-18-426-007.000-003	May 22, 2009	June 3, 2010	2010 031546
45-08-18-426-008.000-003	May 22, 2009	June 3, 2010	2010 031545
45-08-18-426-010.000-003	May 22, 2009	June 3, 2010	2010 031573
45-08-18-426-011.000-003	May 22, 2009	June 3, 2010	2010 031544
45-08-18-426-012.000-003	May 22, 2009	June 3, 2010	2010 031543
45-08-18-426-013.000-003	May 21, 2009	June 3 2010	2010 031542
45-08-18-426-014.000-003	May 21, 2009	June 3, 2010	2010 031541
45-08-18-426-015.000-003	May 21, 2009	June 3, 2010	2010 031540
45-08-18-426-016.000-003	May 21, 2009	June 3 2010	2010 031539
45-08-18-426-017.000-003	May 22, 2009	June 3, 2010	2010 031538
45-08-18-426-018.000-003	May 22, 2009	June 3, 2010	2010 031537
45-08-18-426-019.000-003	September 22, 2008	April 15, 2009	2009 024192
45-08-18-426-020.000-003	May 22, 2009	June 3, 2010	2010 031536
45-08-18-426-025.000-003	May 22, 2009	June 3, 2010	2010 031532
45-08-18-426-024.000-003	May 22, 2009	June 3, 2010	2010 031531
45-08-18-426-023.000-003	May 22, 2009	June 3, 2010	2010 031530
45-08-18-426-022.000-003	May 22, 2009	June 3, 2010	2010 031529

WHEREAS: The Real Estate is part of the Lake Sandy Jo/M & M Landfill ("the site"), which the U.S Environmental Protection Agency (U.S. EPA), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300 by publication in the Federal Register on September 8, 1983.

WHEREAS: The remedy in the September 26, 1986, U.S. Environmental Protection Agency ("U.S. EPA") Record of Decision and the October 22, 2008 Explanation of Significant Differences (collectively, the "ROD") for the site, was prepared and implemented in accordance

with CERCLA. In addition, the remedial action has also been implemented in accordance with Title 13 of the Indiana Code and/or other applicable Indiana law as a result of a release of petroleum or regulated substances including hazardous waste or hazardous substances (collectively, "contaminants of concern") relating to the site, U.S. EPA ID no. IND980500524, IDEM site no. 7500077, which release affected the Real Estate. U.S. EPA and the Indiana Department of Environmental Management ("IDEM") implemented certain response activities at the site, including the following: on-site disposal of excavated sediments; a soil cover; and an alternate water supply for locations using groundwater likely to be affected by contaminants from the site.

WHEREAS: The remedy in the ROD, as concurred with by IDEM, provides that contaminants of concern will remain in the groundwater and in the soil of the Real Estate and requires land use restrictions that must be maintained to ensure the protection of public health, safety, or welfare, and the environment. Sediments and surface soils throughout the site were contaminated with polynuclear aromatic hydrocarbons and heavy metals. U.S. EPA contractors excavated site sediments and disposed of them on-site in various locations at the former landfill. The entire former landfill, including part or all of the Real Estate is now under a soil cover and enclosed within a perimeter fence. Groundwater under the soil cover contained low concentrations of iron, manganese, sodium, magnesium and potassium; and low concentrations of volatile organic compounds, semi-volatile organic compounds and heavy metals. Benzene concentrations in groundwater immediately down-gradient from the site exceeded U.S. EPA drinking water standards. The attached **Exhibit "B"** contains a map showing the location of the Real Estate; the location of the fenced and capped landfill; and the location of the wells with which U.S. EPA and IDEM monitor site groundwater contamination. The attached **Exhibit "C"** contains a table listing the current and historical contaminants of concern and the most recent analytical results from the wells, as of the date of filing this Covenant. The ROD is incorporated herein by reference. It and other related documents may be examined at the U.S. EPA website and at IDEM's office, located in the Indiana Government Center North, 100 N. Senate Ave., Indianapolis, Indiana and may be available electronically through the IDEM virtual file cabinet system which, at the time of the execution of this document, can be found at [www.IN.gov/idem/6551.htm](http://www.IN.gov/idem/6551.htm).

WHEREAS: On October 17, 2012, the Lake County Superior Court entered a declaratory judgment against James Nowacki as owner of Tolleston Club Properties in the City of Gary:

- prohibiting residential use of the Lake Sandy Jo Superfund Site;
- prohibiting the use of groundwater underlying the Lake Sandy Jo Superfund Site in any manner which would endanger human health or the environment.
- prohibiting excavation, installation, construction, removal or use of any buildings, wells, pipes roads, or ditches without written permission of USEPA and IDEM.

The Lake County Superior Court ordered James Nowacki to record an environmental restrictive covenant, and further ordered:

Pursuant to Ind. Rule Trial Proc. 70, and should any Defendant be unwilling to do so, 30 days after this judgment the Court authorizes the

Commissioner of IDEM to execute a restrictive covenant on behalf of each such owner, in the form attached as Exhibits B to C to the Verified Complaint, and authorize the recording of the restrictive covenants, costs to be borne by Defendants Young and Nowacki.

*Comm. Ind. Dept. Env. Mgmt. v. Reagins*, Lake Sup. Court Cause No. 45D11-1206-PL-0049.

### **Restrictions**

**NOW, THEREFORE, by this instrument, Owner subjects the Real Estate to the following restrictions and provisions:**

#### **I. RESTRICTIONS AND OBLIGATIONS**

**1. The Owner:**

- a) Shall prohibit any use of the Real Estate that may interfere with the response activities, long-term monitoring, maintenance of soil cover, or measures necessary to assure the effectiveness and integrity of any response action, or component thereof, selected or undertaken at the Real Estate. Among the prohibited activities are actions that damage or prevent access to any monitoring wells for the site, damage or prevent maintenance of the fence that surrounds the site, or damage the integrity of the soil cover of the site.
- b) Shall not use the Real Estate for residential purposes within the existing boundaries of the fenceline, including, but not limited to, day care facilities (e.g., daycare centers, schools and senior citizen facilities).
- c) Shall not use the Real Estate for purposes of growing food crops.
- d) Shall neither engage in nor allow the installation or use of groundwater wells on the Real Estate. There shall be no use of the groundwater underlying the Real Estate for any purpose, including, but not limited to: human or animal consumption, gardening, and industrial process or cooling. However, groundwater may be extracted as part of an environmental site investigation and/or remediation. If dewatering activities are to occur at the Real Estate, Owner shall have in place and implement a plan to address and ensure the appropriate handling, treatment and disposal of any extracted contaminants in the groundwater.
- e) May not engage in excavation or construction activities of any kind on the Real Estate of soil anywhere within the Real Estate (including ditches, buildings, wells, pipes, or roads), unless approved in writing in advance by IDEM and U.S. EPA.

## II. GENERAL PROVISIONS

2. Property Conveyance - Continuance of Provisions. The Owner shall prevent any conveyance of title, easement, or other interest in the Real Estate from being consummated without adequate and complete provision for compliance with this Covenant and prevention of exposure to contaminants of concern as described in paragraph 1, above.
3. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees and their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or other persons acting under their direction or control (hereinafter "Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in all or any part of the Real Estate by any person shall limit the restrictions set forth herein. This Covenant is imposed upon the entire Real Estate.
4. Binding upon Future Owners. By taking title to the Real Estate, any subsequent owner agrees to comply with these restrictions and the terms of this Covenant.
5. Access for IDEM and U.S. EPA. The Owner shall grant to IDEM and U.S. EPA and its designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of monitoring compliance with this Covenant and the effectiveness of the remedial action; this right includes, but is not limited to, the right to take samples, implement and maintain response actions, inspect records and conduct periodic reviews of the remedial action.
6. Written Notice of the Presence of the Recorded Covenant. The Owner agrees to include in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances), the following notice provision (with blanks to be filled in):

**NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED Feb 25 2013, RECORDED IN THE OFFICE OF THE RECORDER OF LAKE COUNTY ON \_\_\_\_\_, 20\_\_\_\_, INSTRUMENT NUMBER (or other identifying reference) \_\_\_\_\_ IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.**

7. Notice to IDEM of the Conveyance of Property. Owner agrees to provide notice to IDEM of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide IDEM with the notice within thirty (30) days of the conveyance and: include (a) a certified copy of the instrument conveying any interest in

any portion of the Real Estate, and (b) if it has been recorded, its recording reference, and (c) the name and business address of the transferee.

8. This covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

### III. ENFORCEMENT

9. Enforcement. Pursuant to IND. CODE 13-14-2-6 and other applicable law, IDEM may proceed in court, by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate IDEM if any Owner of the Real Estate, or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any Owner of the Real Estate, or its Related Parties breach this Covenant or otherwise default hereunder, IDEM shall have the right to demand specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable, and agrees not to challenge the appropriate court's jurisdiction.

### IV. TERM, MODIFICATION AND TERMINATION

10. Term. The restrictions shall apply until IDEM and/or U.S. EPA determines that the contaminants of concern no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
11. Modification and Termination. This Covenant shall not be amended, modified, or terminated except by prior written approval of IDEM and/or U.S. EPA. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the Office of the Recorder of Lake County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to IDEM.

### V. MISCELLANEOUS

12. Waiver. No failure on the part of IDEM and/or U.S. EPA at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect IDEM's and/or U.S. EPA's right to enforce such term, and no waiver on the part of IDEM and/or U.S. EPA of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.
13. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner from complying with any other applicable laws.
14. Change in Law or Regulation. In the event of any change in applicable law or regulations, this Covenant shall be interpreted so as to ensure the continuing validity and

enforceability of the restrictions listed in paragraph 1, above. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations or policies (including those for environmental restrictive covenants, closure levels or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.

15. Notices. Any notice, demand, request, consent, approval or communication that Owner desires or is required to give to pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To IDEM:  
IDEM, Office of Land Quality  
IGCN-Suite 1101  
100 N. Senate Ave.  
Mail Code 66-31  
Indianapolis, IN 46204-2251  
Attn: State Project Manager, Lake Sandy Jo Site

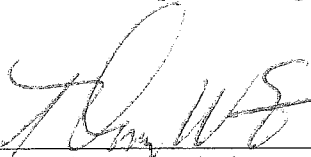
To U.S. EPA:  
Remedial Project Manager, Lake Sandy Jo Site  
Superfund Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Blvd. (SR-6J)  
Chicago, IL 60604

An Owner may change address by giving written notice to IDEM and U.S. EPA via certified mail.

16. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.
17. Liability. An Owner's rights and obligations under this instrument terminate upon transfer of the Owner's interest in the Real Estate, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
18. Authority to Execute and Record. The undersigned persons executing this Covenant on behalf of the Owner represent and certify that they are duly authorized and have been fully empowered to execute, record, and deliver this Covenant.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, as required by law.

On behalf of the owner James Nowacki, as authorized by an October 17, 2012 judgment in *Comm. Ind. Dept. Env. Mgmt. v. Reagins*, Lake Sup. Court Cause No. 45D11-1206-PL-0049.

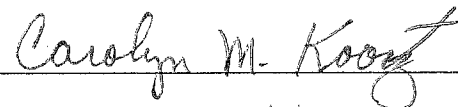
 Thomas W. Easterly

Owner, by Commissioner, Indiana Department of Environmental Management, pursuant to Court order.

STATE OF INDIANA       )  
                                  ) SS:  
COUNTY OF MARION     )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Commissioner Thomas W. Easterly, who acknowledged the execution of the foregoing instrument for and on behalf of James Nowacki.

Witness my hand and Notarial Seal this 25 day of February 20 13.

  
\_\_\_\_\_  
Carolyn M. Koontz, Notary Public  
Residing in Boone County, IN

My Commission Expires: 5-14-16 \_\_\_\_\_

This instrument was prepared by the Indiana Department of Environmental Management:  
IDEM, Office of Land Quality  
IGCN-Suite 1101  
100 N. Senate Ave.  
Mail Code 66-31  
Indianapolis, IN 46204-2251

## EXHIBIT A

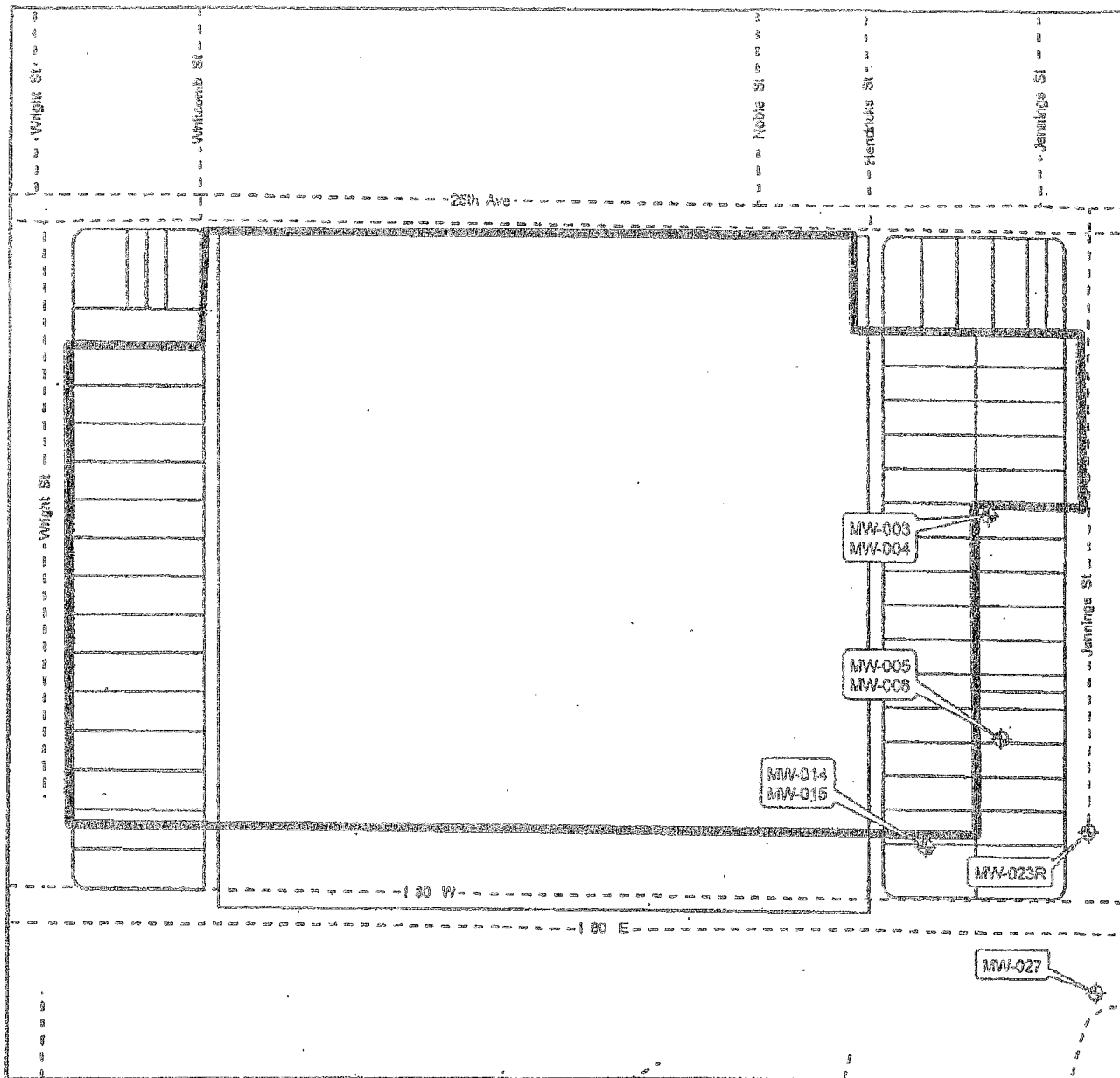
### LEGAL DESCRIPTION OF REAL ESTATE

The Real Estate covered by this Environmental Restrictive Covenant includes the following legal descriptions. Included with the legal descriptions are the corresponding Property Numbers.

<b>Legal Description:</b>	<b>Property #</b>
Tolleston Club Property ALL L.6 Bl.3	45-08-18-426-007.000-003
Tolleston Club Property ALL L.7 Bl.3	45-08-18-426-008.000-003
Tolleston Club Property ALL L.9 Bl.3	45-08-18-426-010.000-003
Tolleston Club Property ALL L.10 Bl.3	45-08-18-426-011.000-003
Tolleston Club Property ALL L.11 Bl.3	45-08-18-426-012.000-003
Tolleston Club Property ALL L.12 Bl.3	45-08-18-426-013.000-003
Tolleston Club Property ALL L.13 Bl.3	45-08-18-426-014.000-003
Tolleston Club Property ALL L.14 Bl.3	45-08-18-426-015.000-003
Tolleston Club Property ALL L.15 Bl.3	45-08-18-426-016.000-003
Tolleston Club Property ALL L.16 Bl.3	45-08-18-426-017.000-003
Tolleston Club Property ALL L.17 Bl.3	45-08-18-426-018.000-003
Tolleston Club Property ALL L.18 Bl.3	45-08-18-426-019.000-003
Tolleston Club Property ALL L.19 Bl.3	45-08-18-426-020.000-003
Tolleston Club Property ALL L.34 Bl.3	45-08-18-426-025.000-003
Tolleston Club Property ALL L.35 Bl.3	45-08-18-426-024.000-003
Tolleston Club Property ALL L.36 Bl.3	45-08-18-426-023.000-003
Tolleston Club Property ALL L. 37 Bl.3	45-08-18-426-022.000-003



**Site Map - Lake Sandy Jo Site, (M & M Landfill) - EPA ID IND980500524**  
**Exhibit 'B', Page 1**







**Mapped By:** Mike Hill, IDEM, Office of Land Quality, Science Services Branch,  
Engineering & GIS Services, June 1, 2011

**Source:** Chain link fence GPS data collection by IDEM personnel on 4-12-11. GPS locations were collected using Trimble GeoXH handheld GPS units with H-Star technology. During GPS data collection both code and carrier phase data were collected. The collected data has been post processed.

Monitoring well GPS data collection by AECOM on 4-27-11 during sampling event.

**PLSS Info:** Section 15, T36N, R07W  
Carmel Township  
Lake County, IN

**Disclaimer:** This map is intended to serve as an aid in graphic representation only. This information is not warranted for accuracy or other purposes.

-  Chain Link Fence
-  Monitoring Well
-  Street Centerline
-  Parcel Line



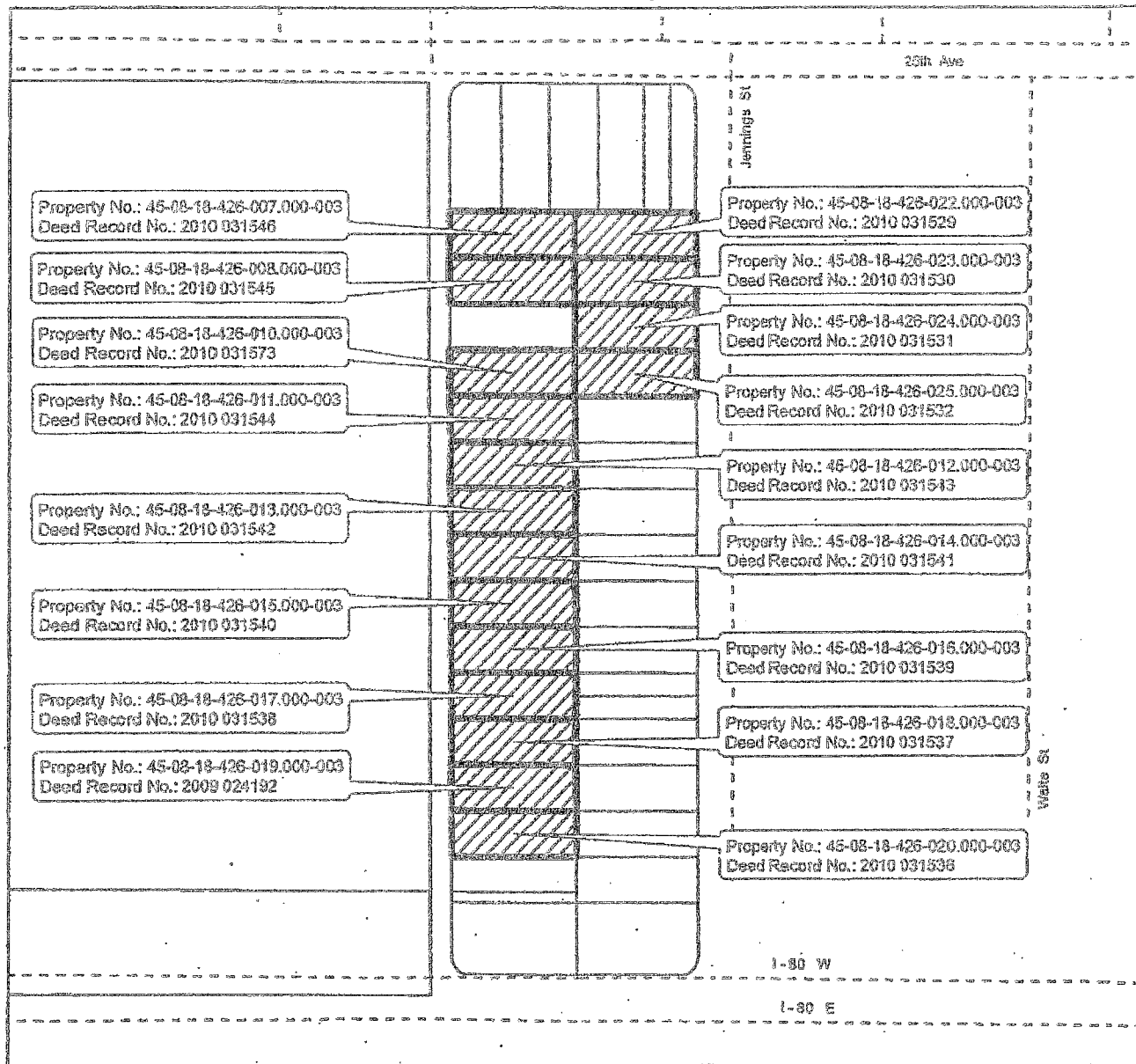
**Lake County**



**Project Area**



**ERC for Lots 6, 7, 9-19, 34-37, Block 3, Tolleston Club Property  
Lake Sandy Jo Site, (M & M Landfill) - EPA ID IND980500524  
Exhibit 'B', Page 2**



**Mapped By:** Mike Hill, IDEM, Office of Land Quality,  
Science Services Branch,  
Engineering & GIS Services, April 4, 2011

**Sources:** Deed information provided on Exhibit 'B', Page 3 and  
Exhibit 'B', Page 4

**Property No.:** Property numbers information provided on Exhibit 'B', Page 3  
and Exhibit 'B', Page 4

**PLSS Info:** Section 18, T36N, R8W  
Carmel Township  
Lake County, IN

**Disclaimer:** This map is intended to serve as an aid in graphic  
representation only. This information is not  
warranted for accuracy or other purposes.

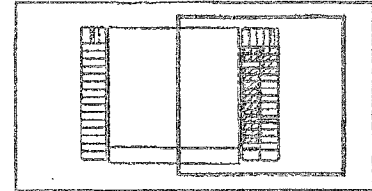
Environmental Restrictive Covenant  
 Parcel Line  
 Street Centerline



**Lake County**



**Project Area**



**Exhibit C**  
**List of Contaminants of Concern**  
**Lake Sandy Jo Superfund Site, Gary, Lake County**  
**IDEM Facility ID # 7500077/SZ025**

**Groundwater Analytical Results<sup>1</sup>**

<b>Sample Location</b>	<b>Sample Date</b>	<b>Benzene Concentration Micrograms/liter(ug/L)</b>
MW-027	October 24-25, 2012	ND <sup>2</sup>
MW-026	October 24-25, 2012	ND
MW-023R	October 24-25, 2012	ND
MW-021	October 24-25, 2012	ND
MW-014	October 24-25, 2012	27
MW-006	October 24-25, 2012	72
MW-005	October 24-25, 2012	2.1
Maximum Contaminant Level <sup>3</sup>		5.0

Foot notes:

<sup>1</sup> The results (above) indicate contaminants of concern and the most recent analytical results as of the Filing date of the ERC. Results cannot be relied upon to depict future environmental conditions at the site.

<sup>2</sup> ND = Non Detect

<sup>3</sup> MCL = Maximum Contaminant Level (MCL) for Benzene in drinking water according to the primary drinking water standards of the Safe Drinking Water Act. Exceedence of the MCL is the action level used for this site.

**Historical Contamination**

When the remedial investigation (RI) was conducted at the Lake Sandy Jo site, the following Contaminants were found:

**Groundwater:**

Iron, Manganese, traces of cyanide, chlorobenzene, chloroethane, toluene, xylenes, benzene, and tetrahydrofuran

**Surface Water/Sediments:**

Heavy metals and Polyaromatic Hydrocarbons (PAHs)

**Soils:**

PAHs, phthalate esters, and lead